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DEPARTMENT OF LABOR

48 CFR Part 2902

[DOL Docket No. DOL-2019-0003]

RIN 1291-AA42

Revisions to the Acquisition Regulations

AGENCY: Office of the Assistant Secretary for Administration and Management, Department of Labor.

ACTION: Direct final rule; request for comment

SUMMARY: In this direct final rule (DFR), the Department of Labor (Department) is amending three definitions in the Department of Labor Acquisition Regulation (DOLAR) in order to provide the Secretary of Labor greater flexibility and a streamlined procedure to delegate procurement authority and appoint procurement officials. Currently, the definitions section of DOLAR delegates the Secretary's procurement authority to certain specified Department officials. The changes would remove some of those specific designations, allowing the Secretary to delegate the Secretary's procurement authority and assign roles and responsibilities related to procurement through internal guidance, without the need to revise the DOLAR.

DATES: This DFR will become effective on [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] unless significant adverse comment is submitted (transmitted, postmarked, or delivered) by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If DOL receives significant adverse comment, the Agency will publish a timely withdrawal in the Federal Register informing

the public that this DFR will not take effect (see Section III, Direct Final Rulemaking,” for more details on this process). Comments to this DFR and other information must be submitted (transmitted, postmarked, or delivered) by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1291-AA42, by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the website instructions for submitting comments.

Mail and hand delivery/courier: Written comments, disk, and CD-ROM submissions may be mailed to Herman J. Narcho, U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Office of the Chief Procurement Officer, 200 Constitution Avenue, NW, Room N-2445, Washington, D.C. 20210.

Instructions: Label all submissions with “RIN 1291-AA42.”

Please submit your comments by only one method. Please be advised that the Department will post all comments received that relate to this DFR on <http://www.regulations.gov> without making any change to the comments or redacting any information. The <http://www.regulations.gov> website is the Federal e rulemaking portal, and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses included in their comments, as such information may become easily available to the public via the

<http://www.regulations.gov> website. It is the responsibility of the commenter to safeguard personal information.

Also, please note that, due to security concerns, postal mail delivery in Washington, D.C. may be delayed. Therefore, the Department encourages the public to submit comments on <http://www.regulations.gov>.

Docket: All comments on this DFR will be available on the <http://www.regulations.gov> website, and can be found using RIN1291-AA42. The Department also will make all the comments it receives available for public inspection by appointment during normal business hours at the address below (For Further Information Contact section). If you need assistance to review the comments, the Department will provide appropriate aids, such as readers or print magnifiers. The Department will make copies of this DFR available, upon request, in large print and via electronic file. To schedule an appointment to review the comments and/or obtain the DFR in an alternative format, contact the Office of the Assistant Secretary for Administration and Management's Office of the Chief Procurement Officer at (202) 693-7171 (this is not a toll-free number). You may also contact this office at the address listed below.

FOR FURTHER INFORMATION CONTACT: Herman J. Narcho, U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Office of the Chief Procurement Officer, 200 Constitution Avenue, NW, Room N-2445, Washington, D.C. 20210; telephone (202) 693-7171 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627.

SUPPLEMENTARY INFORMATION:

I. Background

As noted in the Federal Acquisition Regulation (FAR), “[t]he Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies.” 48 CFR 1.101. In addition, the FAR allows executive agencies to publish regulations which supplement the FAR. 48 CFR 1.301. The DOLAR is the Department’s supplementary regulation for the FAR.

The DOLAR was published on April 27, 2004, 69 Fed. Reg. 22991. The Department is amending three DOLAR definitions found at 48 CFR 2902.101(b): Head of Agency, Head of Contracting Activity, and Senior Procurement Executive.

Presently, all three definitions delegate the Secretary’s procurement authority to specific Department officials for various functions related to their agencies. The intent of this rulemaking is to remove those delegations to allow the Secretary greater flexibility in delegating procurement authority through internal processes and procedures. It is anticipated that the revisions to the three definitions will substantially reduce the time necessary to delegate procurement authority. As this rulemaking only changes the process for delegating procurement authority, DOL does not believe that this rulemaking will affect the rights or responsibilities of the procurement community.

These revisions are consistent with the Department’s overall goal of updating and streamlining its regulations. This rule is consistent with the President’s Management Agenda Cross-Agency Priority (CAP) Goal Number 5 – Sharing Quality Services. The Department is implementing this CAP, in part, via the Department’s Enterprise-Wide Shared Services Initiatives whose primary goals are as follows:

1. Improve human resources efficiency, effectiveness, and accountability;
2. Provide modern technology solutions that empower the DOL mission and serve the American public through collaboration and innovation;
3. Maximize DOL's federal buying power through effective procurement management; and
4. Safeguard fiscal integrity, and promote the effective and efficient use of resources.

This rule will assist the Department's implementation of its Enterprise-Wide Shared Services Initiative.

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

II. Consideration of Comments

The Department will consider comment on issues related to this action. If the Department receives no significant adverse comment, the Department will publish a **Federal Register** document confirming the effective date of the DFR and withdrawing this companion Notice of Proposed Rulemaking (NPRM). Such confirmation may include minor stylistic or technical changes to the DFR. For the purpose of judicial review, the Department views the date of confirmation of the effective date of the DFR as the date of promulgation.

III. Direct Final Rulemaking

In direct final rulemaking, an agency publishes a DFR in the **Federal Register**, with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. The agency may publish an identical concurrent NPRM. If the agency receives no significant adverse comment in response to the DFR, the rule goes into effect. The Department plans to confirm the effective date of a DFR through a separate **Federal Register** document. If the agency receives a

significant adverse comment, the agency will withdraw the DFR and treats such comment as a response to the NPRM. An agency typically uses direct final rulemaking when an agency anticipates that a rule will not be controversial.

For purposes of this DFR, a significant adverse comment is one that explains why the amendments to the regulatory provisions identified below would be inappropriate. In determining whether a comment necessitates withdrawal of the DFR, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response. The Department will not consider a comment recommending an additional amendment to this regulation to be a significant adverse comment unless the comment states why the DFR would be ineffective without the addition.

In addition to publishing this DFR, the Department is publishing a NPRM in the Federal Register. The comment period for the NPRM runs concurrently with that of the DFR. The Department will treat comments received on the companion NPRM as comments also regarding the DFR. Similarly, the Department will consider comments submitted to the DFR as comment to the companion NPRM. Therefore, if the Department receives a significant adverse comment on either the DFR or this NPRM, it will withdraw this DFR and proceed with the companion NPRM. In the event the Department withdraws the DFR because of significant adverse comment, the Department will consider all timely comments received in response to the DFR when it continues with the NPRM. After carefully considering all comments to the DFR and the NPRM, the Department will decide whether to publish a new final rule.

The Department has determined that the subject of this rulemaking is suitable for direct final rulemaking. This amendment is procedural in nature and does not impact the

process by which offerors respond to solicitations, the substance of their responses, or the criteria upon which the solicitation will be evaluated. Finally, the revisions do not impose any new costs or burdens. For these reasons, the Department does not anticipate objections from the public to this rulemaking action.

IV. Discussion of Changes

The Department amends three DOLAR definitions found at 48 CFR 2902.101(b): Head of Agency, Head of Contracting Activity, and Senior Procurement Executive. Presently, all three definitions delegate the Secretary's procurement authority to specific Department officials for various functions related to their agencies. Specifically, the Head of Agency is defined as the Assistant Secretary for Administration and Management except the Secretary of Labor is Head of Agency for acquisition actions, which by the terms of a statute or delegation must be performed specifically by the Secretary of Labor; and the Inspector General is Head of Agency in all cases for the Office of the Inspector General. Further, the definition delegates authority to act as the Head of Agency to the Assistant Secretary for Employment and Training and the Assistant Secretary for Mine Safety and Health for their respective agencies. Finally, for purposes of the Economy Act (determinations and interagency agreements under the Federal Acquisition Regulation, 48 C.F.R. Chapter 1 Subpart 17.5 - Interagency Acquisitions) only, the Employee Benefits Security Administration, Employment Standards Administration, Women's Bureau, Office of the Solicitor, Bureau of Labor Statistics, Office of Disability Employment Policy, and the Occupational Safety and Health Administration are delegated contracting authority.

For purposes of the FAR and DOLAR, the revision defines the Head of Agency as the Secretary of Labor or his/her designee except that the Secretary of Labor is the Head of Agency for acquisition actions, which by the terms of a statute or delegation must be performed specifically by the Secretary of Labor. In addition, in all cases for the Office of the Inspector General, the Inspector General is the Head of Agency.

Head of Contracting Activity (HCA) is currently defined as the official who has overall responsibility for managing the contracting activity, when the contracting activity has more than one person with a warrant issued by the Senior Procurement Executive. The definition identifies the following positions as HCA for their respective organizations: the Director, Administration and Management for the Mine Safety and Health Administration; the Director, Office of Grants and Contract Management for the Employment and Training Administration; the Director of Finance and Administration [since renamed the Director of Procurement and Administrative Services] for the Office of the Inspector General; the Director, Division of Administrative Services for the Bureau of Labor Statistics; and the Director, Business Operations Center for the Office of the Assistant Secretary for Administration and Management and all other agencies not listed in this definition. The revision removes the identification of these specific offices as HCAs, leaving the definition of HCA as the official who has overall responsibility for managing the contracting activity, when the contracting activity has more than one person with a warrant issued by the Senior Procurement Executive.

Finally, the Senior Procurement Executive is defined as the Deputy Assistant Secretary for Administration and Management as defined at 48 CFR 2.101. The revision

defines Senior Procurement Executive as the Deputy Assistant Secretary for Administration and Management or his/her designee.

With the exception of the delegation to the Inspector General to be the Head of Agency for Office of Inspector General procurement matters, the rulemaking removes those delegations to allow the Secretary greater flexibility in delegating procurement authority through internal processes and procedures, which in turn will aid in the implementation of the Department's Enterprise-Wide Shared Services Initiative described above..

V. Rulemaking Analyses and Notices

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a "significant regulatory action" is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of \$100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. The Department has determined that this DFR is not a "significant" regulatory action and a cost-benefit and economic analysis is not required. This regulatory action merely makes a procedural change to the process for delegating procurement authority. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Executive Order 13563 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility to minimize burden.

This DFR makes only a procedural change to amend three definitions in the DOLAR in order to provide the Secretary of Labor greater flexibility and a streamlined procedure for the delegation of procurement authority and the appointment of procurement officials; thus this rule is not expected to have any regulatory impacts.

Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), at 5 U.S.C. 603(a), requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis, which describes the impact of the proposed Rule on small entities. Section 605 of the RFA allows an agency to certify a Rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This DFR does not affect small entities as defined in the RFA. Therefore, the proposed rule will not have a significant economic impact on a substantial number of these small entities. Therefore, the Department certifies that the proposed rule will not have a significant economic impacts on a substantial number of small entities. Therefore, the Department certifies that the proposed rule will not have a significant economic impacts on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. The Department has determined that this DFR does not alter any information collection burdens.

Executive Order 13132 (Federalism)

Section 6 of E.O. 13132 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the E.O. Section 3(b) of the E.O. further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

This DFR does not have a substantial direct effect on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of Government, within the meaning of the E.O. This DFR merely makes an administrative change for internal Departmental operations.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (the Reform Act). Under the Reform Act, a Federal agency must determine whether a regulation proposes a Federal mandate that would result in the increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any single year. This regulatory action merely makes a procedural change to the process for delegating procurement authority. The

requirements of Title II of the Act, therefore, do not apply, and the Department has not prepared a statement under the Act.

Executive Order 13175 (Indian Tribal Governments)

The Department has reviewed the DFR under the terms of EO 13175 and DOL's Tribal Consultation Policy, and have concluded that the changes to regulatory text which are the focus of the DFR would not have tribal implications, as these changes do not have substantial direct effects on one or more Indian tribes, the relationship between the Federal government and Indian tribes, nor the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, no consultations with tribal governments, officials, or other tribal institutions were necessary.

List of Subjects in 48 CFR Part 2902

Government procurement

For the reasons stated in the preamble, the Department amends 48 CFR part 2902 as follows:

PART 2902—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for part 2902 continues to read as follows:

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

2. In section 2902.101, amend paragraph (b) by revising the definitions of "Head of Agency", "Head of Contracting Activity", and "Senior Procurement Executive" to read as follows:

2902.101 Definitions.

* * * * *

Head of Agency (also called agency head), for the FAR and DOLAR only, means the Secretary of Labor or his/her designee except that the Secretary of Labor is the Head of Agency for acquisition actions, which by the terms of a statute or delegation must be performed specifically by the Secretary of Labor; the Inspector General is the Head of Agency in all cases for the Office of the Inspector General.

Head of Contracting Activity (HCA) means the official who has overall responsibility for managing the contracting activity, when the contracting activity has more than one person with a warrant issued by the Senior Procurement Executive or, in the case of the Office of the Inspector General, issued by the Inspector General or his/her designee. Each Head of Agency may designate HCA(s) as appropriate to be responsible for managing contracting activities within his or her respective Agency.

Senior Procurement Executive means the Deputy Assistant Secretary for Administration and Management or his/her designee.

Bryan Slater,
Assistant Secretary for Administration and Management, Labor.
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